

November 2, 2001

Sent via e-mail, hand delivery, and U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Investigation by the Department to Establish Guidelines for
Service Quality Standards, D.T.E. 99-84

Dear Secretary Cottrell,

On October 22, 2001, Bay State Gas Company ("Bay State" or the "Company") filed a Motion for Clarification and Extension of Appeal Period ("Motion"). On October 31, 2001, Utility Workers Union of America ("UWUA") filed an Opposition to Bay State's Motion.

The Attorney General files this letter in support of UWUA's Opposition to Bay State's Motion. The Attorney General urges the Department of Telecommunications and Energy ("Department") to require Bay State to comply with the Department's prior Orders addressing the issue of staffing level benchmarks.¹

Bay State contends that distribution companies, such as Bay State, that have not made PBR filings since the effective date of G.L. c. 164, § 1E, are exempt from staffing level requirements and that the Department lacks authority to order or require otherwise. Motion, pp. 4-6. Bay State, however, misinterprets the language of G.L. c. 164, § 1E, whose plain language

¹The Department directed gas and electric distribution companies to establish staffing level benchmarks on a company-specific basis as determined by then-effective collective bargaining agreements. *Investigation by the Department to Establish Guidelines for Service Quality Standards*, D.T.E. 99-84 (June 29, 2001). The Department later clarified its Order, directing gas and electric distribution companies to submit Service Quality plans with staffing level benchmarks based on staffing levels in existence on November 1, 1997, except as provided by collective bargaining agreements or other statutory provisions. Order on Motion for Clarification by Joint Utilities, p. 12 (September 28, 2001).

merely provides that “[i]n complying with the service quality standards and employee benchmarks established pursuant to this section...[a] gas company that makes a performance based rating filing after the effective date of this act shall not be allowed to engage in labor displacement or reductions below staffing levels in existence on November 1, 1997....” G.L. c. 164 § 1E(b). The statute does not mention exemptions for companies that have not, or will not, file PBR plans. In its Motion, Bay State carefully highlights those portions of the statute that could support its claim while ignoring others that refute its position. Not surprisingly, Bay State is the sole distribution company in the Commonwealth asserting such misguided claims of an exemption from the staffing level requirements. The Department should not allow Bay State to delay implementation of the Service Quality Standards by using these meritless tactics.

The Attorney General concurs with UWUA’s stance that the Department’s clarification Order is clear and unambiguous on the issue of staffing level benchmarks and thus requires no further clarification. Accordingly, the Department should deny the Company’s Motion. Bay State should be required to comply with the same staffing level benchmarks that apply to all other gas and electric distribution companies in the Commonwealth.

Sincerely,

Wilner Borgella, Jr
Assistant Attorney General
Utilities Division

WB/wb

cc: Caroline O’Brien, Hearing Officer
Service List